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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,517

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Domokos Boda

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3719

466 7590 06/25/2008  
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EXAMINER

TOTH, KAREN E

ART UNIT

PAPER NUMBER

3735

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,517	<b>Applicant(s)</b> BODA, DOMOKOS	
	<b>Examiner</b> KAREN E. TOTH	<b>Art Unit</b> 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 11-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/20/2006</u> .   | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrases "especially for" and "preferably" render the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salzman (US Patent 5423320) in view of Fiddian-Greene (US Patent 6238339).

Regarding claim 11, Salzman discloses a tonometric device comprising a distal end configured to be inserted in a patient's gastrointestinal tract (element 14) with a section that is introduced into the body (element 14a), where the introduced section

comprises a first tube (element 54) that is connected to an additional tube (the portion of 54 remaining outside the body) and parallel to a second tube (element 56) that is also connected to an additional tube (the portion of 56 remaining outside the body), where the distal end of the first and second tubes are in communication (figure 6), where the tubes are made of gas permeable material (column 5, lines 6-8 and 16-23). Salzman does not disclose the particular gas permeable material, nor means on the external portion of the device for fixing it in position. Fiddian-Greene teaches a tonometric device comprising a sensing section covered with a gas-permeable silicone rubber membrane (column 8, lines 50-51), where the device's position may be fixed using an external component of the device (element 24), in order to effectively control sampling. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the device of Salzman with a silicone membrane and means for fixing the device's position, as taught by Fiddian-Greene, in order to effectively control sampling.

Regarding claim 12, Salzman discloses the diameter of the device being substantially constant (figure 5).

Regarding claim 13, Salzman's tubes inherently have connecting means because they are connected to a separate device (column 6, lines 25-27).

Regarding claim 14, Salzman discloses all the elements of the claimed invention, as described above, except for connecting the tubes to a syringe. Fiddian-Greene further teaches tubes that are configured to connect to a syringe (column 24, lines 60-64), in order to manually control pressure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the system of Salzman

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with the tubes configured to connect to a syringe, as taught by Fiddian-Greene, in order to manually control pressure.

Regarding claims 15 and 16, though Salzman does not expressly disclose the specific diameter and wall thicknesses of the tubes, at the time the invention was made it would have been an obvious matter of design choice for one of ordinary skill in the art to choose a particular wall thickness and diameter, because the Applicant has not disclose that the particular diameters and thicknesses provide a particular advantage, are for a particular purpose, or solve a stated problem. Moreover, it appears that a particular combination of wall thickness and diameter chosen by one of ordinary skill in the art and Applicant's wall thickness and diameter would perform equally well to monitor a patient.

Regarding claim 17, Salzman's first and second tubes are built together (figure 6).

5. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salzman in view of Fiddian-Greene, and further in view of Rantala (US Patent 6432051).

Salzman in view of Fiddian-Greene discloses all the elements of the claimed invention, as described above, and further discloses connecting the ends of the tubes (via element 58), but does not disclose filling the system with an indicator liquid for detecting carbon dioxide concentration. Rantala teaches a tonometric measuring system comprising an indicator liquid used to measure carbon dioxide within the sensing device (column 6, lines 46-53), in order to accurately detect the patient's

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condition. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the system of Salzman and Fiddian-Greene with an indicator liquid, as taught by Rantala, in order to accurately detect the patient's condition.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patents 6216024 to Weil, 6370941 to Nakamura, and 5957839 to Kruse, which disclose similar inventions.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN E. TOTH whose telephone number is (571)272-6824. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert L. Nasser Jr/  
Primary Examiner, Art Unit 3735

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